

Internal Revenue Service

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CC:PSI:2- PLR-143544-03

Date:

November 20, 2003

X =

Y =

A =

D1 =

D2 =

D3 =

D4 =

Dear :

This letter responds to a letter, dated July 9, 2003, and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(g) of the Internal Revenue Code.

The information submitted states that X was incorporated and elected to be an S corporation effective D1. On D2, X's S election terminated when all of X's stock was sold to Y, a C corporation. After the acquisition by Y of X through D3, X was part of Y's consolidated group. A acquired all the shares of X on D3. A, the sole shareholder and president of X, filed a Form 2553, Election by a Small Business Corporation, for X effective D4.

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Section 1361(a)(1) defines an S corporation as a small business corporation for which an election under § 1362(a) is in effect. Under § 1361(b)(2)(A), a member of an affiliated group is not eligible to be a small business corporation.

Section 1362(d)(2) provides that an election under § 1362(a) terminates whenever an S corporation ceases to be a small business corporation.

Section 1362(g) provides the general rule for re-electing S status after a termination absent the Secretary's consent. Under § 1362(g), if an election under § 1362(a) has been terminated under § 1362(d), the corporation is not eligible to re-elect S status under § 1362(a) for any taxable year before its 5th taxable year that begins after the 1st taxable year for which the termination is effective.

Section 1.1362-3(a) of the Income Tax Regulations provides the general treatment of an S corporation in an S termination year. Under this rule, an S termination year occurs when an S election terminates on a date other than the first day of the corporation's taxable year. The portion of the S termination year that ends on the day prior to the termination is treated as a short taxable year for which the corporation is an S corporation (the S short year). The portion of the S termination year that begins on the day the termination is effective is treated as a short taxable year for which the corporation is a C corporation (the C short year).

Section 1.1362-3(c)(3) provides that the S and C short years are treated as two separate years for all Code provisions.

Section 1.1502-76(b)(1)(ii) provides the rule for when a corporation becomes or ceases to become a member of a consolidated group. When a corporation ceases to be a member during a consolidated return year, it ceases to be a member at the end of the day on which its status as a member changes, and its tax year ends for all Federal income tax purposes at the end of that day.

X's S election terminated on D2. X had an S short year ending on the day prior to D2 and a C short year beginning on D2. Each of these short years is treated as a separate taxable year. Additionally, X's tax year as a member of Y's consolidated group ended on D3.

Based solely on the facts and representations submitted, we conclude that on D4, at least five taxable years had passed since the termination of X's S election. Also, X began a separate taxable year for federal tax purposes on D4. Thus, X was eligible to re-elect S status effective D4.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the

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Code. Specifically, no opinion is expressed concerning whether X otherwise satisfies the S corporation eligibility requirements.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely yours,

AUDREY W. ELLIS
Reviewer, Branch 2
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes